

CLEO MAY FRESH
MARJORIE P. DETERTS

IBLA 80-325

Decided October 16, 1980

Appeal from the decision of the Colorado State Office, Bureau of Land Management, returning various documents relating to mining claim, CMC 150396, and declaring the claim abandoned.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Assessment Work--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and related documents with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

APPEARANCES: Carl H. Noel, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Cleo May Fresh and Marjorie P. Deterts have appealed from the decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 7, 1979, returning various documents relating to the Cleo May placer claim, CMC 150396, as insufficient for purposes of recordation under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

On September 27, 1979, appellants submitted to BLM a copy of a quitclaim deed dated May 2, 1961, transferring the Behan placer mining claim to appellants, a map, and an affidavit of value of labor and improvements for the period from September 1, 1979, to September 1, 1980. The affidavit, which was recorded with the county recorder on August 3, 1979, and the map indicate that the Cleo May claim and Behan claim are one and the same.

In its decision, BLM indicated that appellants did not file a certificate of location before October 22, 1979, as required by FLPMA and enclosed a copy of the pertinent regulations. On January 11, 1980, counsel for appellants appeared at the BLM office and attempted to submit the original certificate of location for the Cleo May placer claim. BLM would not accept it. A copy of the certificate of location attached to appellants' statement of reasons indicates that the appellants located the Cleo May claim on April 18, 1949.

In their statement of reasons, appellants first point out that the definition of "[c]opy of the official record of the notice of certificate of location" found at 43 CFR 3833.0-5(i) includes: "other evidence, acceptable to the proper BLM office, of such instrument of recordation." Appellants argue that such evidence was offered and accepted by BLM prior to October 22, 1979. Appellants then contend that they should have been allowed to correct filings as they attempted to do, since they would have had ample time to submit the required certificate of location if BLM had not accepted their filings originally. They note that other claimants were informed that their filings were deficient before the October 22, 1979, cutoff and argue that they have been unfairly treated.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The corresponding regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal Lands

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

Section 314(a) of FLPMA and Departmental regulations at 43 CFR 3833.2-1(a) also require the owner of such a mining claim to file evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of recording.

Thus, on or before October 22, 1979, appellants were required to have filed a copy of the certificate of location for the Cleo May claim and evidence of assessment work for the preceding assessment year or a notice of intention to hold the claim.

The failure of BLM to notify appellants upon filing that their submissions did not meet the requirements of FLPMA does not prevent BLM from later doing so. 43 CFR 3833.5(f). Nor do noncomplying submissions become "acceptable" because BLM takes receipt of them. The quitclaim deed submitted by appellants did not constitute "other evidence" of the certificate of location as it in no manner refers to the location of the claim or the recording of that claim in the county recorder's office. ^{1/} In any event, the provision of the regulations concerning the submission of "other evidence" only applies when the notice of location is no longer obtainable or when a claimant purports to hold a claim under 30 U.S.C. § 38 (1976). Herein, appellants had a copy of the location notice. They merely failed to send it to BLM. Cf. Philip Sayer, 42 IBLA 296 (1979). Additionally, we note that the affidavit of assessment work was also unacceptable because it related to the coming assessment year rather than the preceding year.

The responsibility for complying with the recordation requirements rested with appellants and appellants must bear the consequences of their failure to do so. BLM has no authority to waive compliance or accept late filings. Although it is undoubtedly true that BLM was able to review and reject some noncomplying filings before the October 22, 1979, filing date, there is no evidence that BLM did not properly process appellants' filings. Glen J. McCrorey, 46 IBLA 355 (1980).

As noted in the BLM decision, appellants may relocate these claims for locatable minerals and file notice with BLM within 90 days of location as provided in 43 CFR 3833.1 subject to any intervening rights of third parties and assuming no intervening closure of the land to mining location.

^{1/} It was unexplained and we find it curious that the quitclaim deed purporting to transfer ownership of the claim at issue to appellants has a later date than the certificate of location evidencing appellants' location of the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

